

January 14, 2022

*Via electronic filing/e-mail*

The Honorable Jocelyn Boyd  
Chief Clerk and Executive Director  
The Public Service Commission of South Carolina  
101 Executive Drive, Suite 100  
Columbia, SC 29210

RE: Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to Request the Commission to Hold a Joint Hearing with the North Carolina Utilities Commission to Develop Carbon Plan  
Docket 2021-349-E

Dear Ms. Boyd:

As you know, I and my firm represent Google, LLC (“Google”) in the subject docket. On January 13, 2022, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, “Duke”) filed their Reply to Google’s Memorandum in Opposition to Duke’s Motion to Recuse. Normally, a moving party (here, Duke), bearing the burden on its motion, would be entitled to have the last word on responsive arguments. Much of the Duke Reply, however, veers sharply into completely new material being offered for the first time. In particular, lengthy sections purportedly taken from other dockets quoting Commissioner Thomas J. Ervin. This material is beyond the record, nowhere contained in Duke’s initial motion, and should thus should not be considered.

To the extent such matter might be considered by the Commission, Google is compelled to respond further briefly. The collateral material propounded by Duke, occurring in unrelated dockets and resulting in no orders, has zero precedential value. *See S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm’n*, 270 S.C. 590, 610, 244 S.E.2d 278, 288 (1978) (Ness, J., concurring in part and dissenting in part) (noting the PSC is “not bound by its prior decisions”). In particular, with a motion for recusal, Commissioner Ervin’s impressions on whether he could be properly impartial are to be accorded great weight. *Davis v. Parkview Apartments*, 409 S.C. 266, 285, 762 S.E.2d 535, 545 (2014). Here, unlike other instances cited by Duke, Commissioner Ervin, a highly regarded former legislator and trial judge, has expressed no concerns as to his impartiality. Duke has failed

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to overcome Commissioner Ervin's implicit assurance that he can properly serve in this matter.

Duke further chides Google for not analyzing at length our state's Judicial Canons. First, the Commission is undoubtedly familiar with the Canons, and Google will not lecture the Commission on its ethics as Duke presumes to. Second, the Canons are so facially inapposite to the current allegations that Duke's arguments hardly demand response. Nonetheless, in light of Duke's reliance, Google requests and recommends that the Commission review the Canons closely to identify what language might render a Commissioner's view on extant legal issues in a proceeding, such as jurisdiction, disqualifying. There is none. Duke's argument that a judge (or Commissioner) should be recused for making judgments would invite disqualification for any disagreement. That cannot be so. *See Belue v. Leventhal*, 640 F.3d 567, 575 (4th Cir. 2011) ("But to argue that judges must desist from forming strong views about a case is to blink the reality that judicial decisions inescapably require judgment.").

Google believes the Duke motion can and should be denied without hearing. Nonetheless, Google reserves and reiterates its request to present oral argument in the event the Commission schedules a hearing on the motion.

Very Truly Yours,



Weston Adams, III

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cc: All counsel of record- *Via electronic service*